

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

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Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992:

Leased Commercial Access

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MM Docket No. 92-266

CS Docket No. 96-60

**COMMENTS OF
THE INTERNATIONAL CABLE CHANNEL PARTNERSHIP, LTD.**

The International Cable Channel Partnership, Ltd. ("ICCP") submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in this proceeding. ICCP is deeply concerned that the Commission's proposed revisions to the leased access rules will substantially impair the ability of existing programmers, such as ICCP, to compete with leased access services for cable system carriage and subscribers.

ICCP owns and operates the International Channel, which is a multilingual video programming service providing educational and entertainment programming appealing to a variety of minority and ethnic groups. Launched on July 3, 1990, the International Channel presently is distributed by multichannel video programming distributors, particularly cable operators, throughout the United States and in Latin America to approximately 7 million subscribers. ICCP provides programming twenty-four hours per day to disparate ethnic groups in their native languages and features programming in twenty-three different Asian, European and Middle Eastern languages, including Arabic, Armenian, Cambodian, Cantonese, Farsi,

French, German, Greek, Hebrew, Hmong, Hindi, Italian, Japanese, Korean, Mandarin, Mon Khmer (Cambodian), Norwegian, Polish, Russian, Spanish, Tagalog (Filipino), Thai and Vietnamese. It is the kind of niche service which greatly expands the diversity of programming available to viewers by providing unique programming which would otherwise be unavailable.

1. Subsidized Leased Access at Virtually No Cost Is Not in the Public Interest.

When the Commission's "opportunity cost" method for valuing channel capacity is coupled with its proposal to mandate basic distribution of leased access programming, it appears that the resulting valuation will be negligible for virtually all programming services (except shopping channels) carried on regulated tiers. Typically, cable programming services which have been recently launched on a system will yield little advertising revenue through local ad avails. Further, the revenue from mandated carriage of the leased access channel on basic service or the most popular cable programming service tier ("CPST") will offset the lost revenue from the deleted channel.

In its search for a methodology which will foster leased access but will be simple to administer and apply, the Commission tentatively concludes that "the cost formula should not explicitly include revenue lost because of a purported loss in subscribership to a particular tier" resulting from a dropped channel because "any such subscriber loss is too speculative to measure accurately." Further Notice at ¶86. However, the impact of a tiered channel on subscribership to that tier or to basic service is a critical element of such value. For example, in its presentations to cable operators, ICCP attempts to estimate the potential "basic lift" which the International Channel can provide to basic service on specific cable systems, i.e. the number of basic subscribers which carriage of the International Channel may attract to that system's basic

service. ICCP will identify the number of local ethnic minorities associated with the foreign-language programming carried on the International Channel and will undertake to market basic service to specifically-targeted minority groups to whom the International Channel will appeal. By ignoring the impact of channel deletions on basic and tier subscribership, the Commission substantially understates the value of channel capacity. Although such impact may be difficult to quantify, the Commission should formulate a proxy for it as an additional and necessary element of channel capacity value.

By limiting its valuation methodology solely to the deleted channels (Further Notice at ¶69), the Commission focuses on channels which typically have been launched recently and have yet to mature on the system(s) being evaluated. ICCP believes that cable operators will tend to delete the last programming services to have been launched. Those services, which have not yet obtained programming listings in local newspapers or significant local viewership, will generate lower advertising revenues from local ad avails and lower penetration and resulting subscribership revenues if carried on other than basic service or a mature CPST. At a minimum, the Commission should continue its current practice of valuing leased access channel capacity based on entire categories of programming.

A formula which assigns virtually no value to channel capacity is necessarily flawed and exposes cable operators and subscribers to poorly-conceived, undercapitalized and disorganized local leased access ventures. As explained in ICCP's March 13, 1996 ex parte presentation in this docket, ICCP has had first-hand experience with such short-lived leased access programming efforts by purported representatives of local ethnic groups:

Such an appeal could even be made by ethnic groups saying that they represent the local interest of the Russian, Persian or Chinese communities. In fact, this has happened in several cases already and we learned very quickly that the local

entrepreneurs do not have access to national news from the home country, significant cultural or sporting events and, in fact, may even end up airing pirated videos broken up by a multitude of commercials. There have been instances where such enterprises begin and fail within a matter of six months. In such a case, the community's interest is not served, the cable company receives the grief from consumers and the program provider loses out altogether.

Of course, the damage to the existing programmer already has been done. The bond with subscribers which the programmer had sought to develop since launch has been broken, and the goodwill resulting from ongoing marketing efforts is irretrievably lost.

2. Mandated Carriage of Leased Access Programming Will Freeze Out Other Programmers from Popular Tiers.

ICCP respectfully submits that the Commission correctly interpreted and balanced the competing interests identified by Congress when it originally concluded that carriage decisions should remain subject to negotiation between leased access programmers and cable operators. Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, 8 FCC Rcd. 5631 (1993), at ¶498. The Commission has provided no empirical basis for reversing course and now "tentatively concluding" that all leased access programming must be carried on basic service or the most highly-penetrated CPST. Further Notice at ¶¶118-119.

Such mandated carriage for leased access programming will create a barrier to basic or CPST carriage of the International Channel and innumerable other programming services which are dependent upon a mix of modest per-subscriber and advertising revenues. There are real limits to the number of services which cable operators can include in basic service or CPSTs. To require the inclusion of one class of services necessarily will require the exclusion of other services. The Commission's proposed carriage requirement runs directly counter to the "promotion of competition" among programming services -- the expanded purpose of leased

access. 47 U.S.C. §532(a). Further, the need for a “genuine outlet” for leased access programming, upon which the Commission bases this extraordinary requirement, clearly does not mandate such carriage. Leased access programming could be carried on a leased access tier or package which subscribers could choose or reject provided that the programming were technically available to them.

3. The Commission Should Adopt Transitional Rules to Mitigate the Harm to Existing Programming Services Caused by Revised Leased Access Rules.

The current shortage of channel capacity is well established. If the Commission sets non-market leased access rates and mandates preferential carriage, leased access programming will expand, causing the widespread deletion of existing programming services. ICCP respectfully submits that, under those circumstances, programming diversity and competition will be reduced. The Commission should provide a substantial, multi-year transition period for new leased access rules in order to mitigate the adverse effects of such deletion on existing programmers, which then will be required to recalculate subscriber projections, reduce programming expenditures, and retool strategic plans. ICCP also suggests that the Commission make every effort to limit the deletion of existing programming in order to accommodate part-time leased access requests and enable programmers to negotiate with cable operators for continued carriage when designated as a leased access channel by permitting cable operators to redesignate the channels to be deleted for leased access.

Conclusion

ICCP respectfully submits that the International Channel provides the kind of programming diversity encouraged by Congress and the Commission. However, leased access rules which provide preferential carriage at subsidized, below-market rates will create a potentially impenetrable barrier to the continued growth and improvement of the International Channel. ICCP requests that the Commission reconsider its present proposals to revise the leased access rules and, if revised rules are deemed necessary, adopt a methodology which more accurately reflects the valuation of channel capacity. Preferential leased access carriage should be discarded in favor of individually-negotiated carriage tailored to particular program offerings and viewer demands. To do otherwise, will decrease diversity and impede the very competition which the Commission seeks to promote.

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Respectfully submitted,

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